

**IN THE UNITED STATES COURT OF FEDERAL CLAIMS**  
(Electronically Filed September 6, 2018)

Isa Brittain and Willie Duffie, et al., )  
Plaintiffs, )  
v. ) Case No. 18-342L  
United States of America, ) Hon. Lydia Kay Griggsby  
Defendant. )

**ANSWER TO PLAINTIFFS' SECOND AMENDED COMPLAINT**

Pursuant to Rules 8 and 12 of the Rules of the United States Court of Federal Claims, Defendant, the United States of America, responds to the allegations in the numbered paragraphs of Plaintiffs' Second Amended Complaint, ECF No. 14 ("Complaint"), as follows:

1. The allegations in Paragraph 1 are conclusions of law to which no response is required. To the extent a response is required, the United States admits that the Tucker Act, 28 U.S.C. § 1491(a)(1), confers jurisdiction on this Court to hear certain claims based on alleged violations of the Fifth Amendment to the United States Constitution.

2. The allegations in Paragraph 2 are conclusions of law to which no response is required. To the extent a response is required, the United States admits that Plaintiffs are alleging a Fifth Amendment taking claim under 28 U.S.C. § 1491(a) and 16 U.S.C. § 1247(d).

3. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 3 and on that basis denies those allegations. To the

extent that the allegations in Paragraph 3 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

4. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 4 and on that basis denies those allegations. To the extent that the allegations in Paragraph 4 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

5. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 5 and on that basis denies those allegations. To the extent that the allegations in Paragraph 5 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

6. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 6 and on that basis denies those allegations. To the extent that the allegations in Paragraph 6 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

7. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 7 and on that basis denies those allegations. To the extent that the allegations in Paragraph 7 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

8. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 8 and on that basis denies those allegations. To the extent that the allegations in Paragraph 8 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

9. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 9 and on that basis denies those allegations. To the extent that the allegations in Paragraph 9 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

10. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 10 and on that basis denies those allegations. To the extent that the allegations in Paragraph 10 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

11. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 11 and on that basis denies those allegations. To the extent that the allegations in Paragraph 11 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

12. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 12 and on that basis denies those allegations. To the extent that the allegations in Paragraph 12 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

13. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 13 and on that basis denies those allegations. To the extent that the allegations in Paragraph 13 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

14. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 14 and on that basis denies those allegations. To the

extent that the allegations in Paragraph 14 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

15. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 15 and on that basis denies those allegations. To the extent that the allegations in Paragraph 15 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

16. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 16 and on that basis denies those allegations. To the extent that the allegations in Paragraph 16 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

17. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 17 and on that basis denies those allegations. To the extent that the allegations in Paragraph 17 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

18. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 18 and on that basis denies those allegations. To the extent that the allegations in Paragraph 18 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

19. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 19 and on that basis denies those allegations. To the extent that the allegations in Paragraph 19 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

20. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 20 and on that basis denies those allegations. To the extent that the allegations in Paragraph 20 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

21. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 21 and on that basis denies those allegations. To the extent that the allegations in Paragraph 21 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

22. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 22 and on that basis denies those allegations. To the extent that the allegations in Paragraph 22 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

23. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 23 and on that basis denies those allegations. To the extent that the allegations in Paragraph 23 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

24. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 24 and on that basis denies those allegations. To the extent that the allegations in Paragraph 24 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

25. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 25 and on that basis denies those allegations. To the

extent that the allegations in Paragraph 25 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

26. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 26 and on that basis denies those allegations. To the extent that the allegations in Paragraph 26 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

27. The United States admits that on February 6, 2018, the Surface Transportation Board issued a Notice of Interim Trail Use (“NITU”) relating to a verified notice of exemption filed by Norfolk Southern Railway Company to abandon an approximately 4.40-mile rail line between milepost XXC 0.0 and milepost XXC 4.4 in Atlanta, Fulton County, Georgia.

28. The allegations in Paragraph 28 are conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

29. The allegations in Paragraph 29 are conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

30. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 30 and on that basis denies those allegations. To the extent that the allegations in Paragraph 30 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

31. The United States lacks knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 31 and on that basis denies those allegations. To the extent that the allegations in Paragraph 31 are conclusions of law, no response is required. To the extent a response is required, those allegations are denied.

32. The allegations in Paragraph 32 are conclusions of law to which no response is required. To the extent a response is required, those allegations are denied.

The remaining allegations in the Complaint provide Plaintiffs' prayer for relief to which the Rules require no response. To the extent the Rules require a response, the United States denies that anything entitles Plaintiffs to the relief they seek or to any relief whatsoever.

### **GENERAL DENIAL**

All of the allegations in Plaintiffs' Complaint that have not been specifically admitted, denied, or otherwise answered are hereby denied.

### **AFFIRMATIVE DEFENSES**

#### First Defense

To the extent Plaintiffs cannot establish an ownership interest in the portion of the railroad corridor that was allegedly taken from Plaintiffs on the date of the NITU, Plaintiffs lack standing to seek just compensation under the Fifth Amendment.

#### Second Defense

The Complaint fails to state a claim upon which relief can be granted.

### **PRAYER**

WHEREFORE, the United States of America denies that Plaintiffs are entitled to the relief requested, or any relief whatsoever, and requests that this action be dismissed with prejudice, that judgment be entered for the United States, and that the United States be granted such other relief as the Court will allow.

Respectfully submitted this 6th day of September, 2018.

JEFFREY H. WOOD  
ACTING ASSISTANT  
ATTORNEY GENERAL  
United States Department of Justice  
Environment & Natural Resources Division

*s/ Laura Duncan*  

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